

NOT YET SCHEDULED FOR ORAL ARGUMENT

U.S. COURT OF APPEALS FOR THE  
DISTRICT OF COLUMBIA CIRCUIT

Commonwealth of Kentucky, et al.,

Petitioners,

v.

U.S. Environmental Protection Agency  
and Michael S. Regan, Administrator,

Respondents.

Case No. 24-1087 and consolidated  
cases

**Joint Proposed Briefing Schedule and Format**

As ordered by the Court on June 5, 2024, the parties jointly propose a schedule and format for briefing in this case.

Petitioners challenge the EPA action, Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles, 89 Fed. Reg. 27842 (Apr. 18, 2024). This Court has consolidated 8 petitions for review challenging that action. Petitioners are 26 states and 56 organizations and individuals. Respondents are EPA and Michael S. Regan, its Administrator. Respondent-Intervenors are 22 states, the District of Columbia, five local governments, and 16 public interest organizations and public companies.

The parties propose that the Court adopt the following briefing schedule and format:

<b>Filing</b>	<b>Date due</b>	<b>Words</b>
Petitioners' opening briefs	September 6, 2024	26,000 words, shared between up to 2 briefs
Briefs from any amici supporting Petitioners	September 13, 2024	6,500 words
Respondents' answering brief	November 26, 2024	26,000 words
Briefs from any amici supporting Respondents	December 6, 2024	6,500 words
Respondent-Intervenors' briefs	December 23, 2024	18,200 words, shared between up to 5 briefs
Petitioners' replies	January 13, 2025	13,000 words, shared between up to 2 briefs
Deferred appendix	January 24, 2025	n/a
Final briefs due	January 31, 2025	See above

In addition, all parties agree on the importance of scheduling oral argument soon after the conclusion of briefing and request that the Court schedule oral argument during the spring 2025 term. Respondent-Intervenors strongly support this request.

### **The parties' rationale for proposed briefing schedule**

The proposed briefing intervals reflect a number of factors that the parties accounted for in this complex, multi-party case, including: time needed for some parties to coordinate with each other to avoid duplicative briefing, time needed for Respondents to obtain the necessary management approvals at the Justice Department and EPA, federal holidays, counsel's leave schedules, counsel's other

work commitments, and the parties’ desire for these petitions for review to be resolved without undue delay.

As to the last two factors, the parties have proposed a briefing schedule that (a) minimizes conflict with briefing that will also start shortly in *Nebraska v. EPA*, Case No. 24-1129 and consolidated cases (D.C. Cir.), another complex petition-for-review matter involving many of the same parties and (b) allows for both sets of cases to be argued in spring 2025. *See, e.g., Concerned Household Elec. Consumer’s Council v. EPA*, No. 22-1139 (D.C. Cir.) (holding oral argument for April 14, 2023, following briefing completed on February 21 of that year); *City of Port Isabel v. FERC*, No. 23-1174 (D.C. Cir.) (holding oral argument for May 17, 2024, following briefing completed on March 18 of that year).

### **Petitioners’ rationale for separate briefs and word allocations**

First, the proposed schedule provides adequate time to brief the petitions in an orderly fashion, commensurate with their complexity, while still enabling this Court to hear oral argument during the 2024-2025 Term and issue a decision by the end of that Term. Petitioners seek review of EPA’s rule that prescribes or revises federal standards for greenhouse-gas emissions of light-duty vehicles of model years 2027 and later. Holding oral argument during the Court’s 2024 Term will ensure the petitions are resolved expeditiously and provide all parties with regulatory certainty as soon as possible. Planning for model year 2027 is already

underway for some vehicles. It is in the interest of all concerned to resolve the petitions in a way that minimizes the number of model years that are affected by standards subject to ongoing dispute.

Second, separate briefs are appropriate here given the different interests of the States and the private petitioners. For example, the State petitioners have sovereign interests that the private petitioners do not, such as how EPA's action at issue in this case will directly affect the State petitioners' electric grids. Thus, the parties' differing interests may affect their arguments on both standing and the merits. The private petitioners plan to confer with the State petitioners about their challenges and to avoid presenting duplicative arguments in their separate brief.

Third, the proposed word limit is appropriate given the complexity of this significant dispute. Petitioners are a diverse group of 82 public and private entities and individuals that will present a wide range of arguments for why EPA's rule is unlawful. The proposed aggregate word limit of 26,000 is substantially less than the word count established in *Competitive Enterprise Institute et al v. EPA*, No. 20-1145 (order dated Oct. 19, 2020), which raised similar issues. It is more than the word count in the similar case, *Texas v. EPA*, No. 22-1031, but that is because there are many more petitioners in this challenge who plan to raise more issues than were raised in the prior litigation.

## **Respondent-Intervenors’ rationale for separate briefs and word allocations**

Respondent-Intervenors include five distinct sets of entities. The intervention motions of four have been granted: a coalition of 22 states, the District of Columbia, and four local governments (Doc. 2050867); a coalition of 12 public health and environmental organizations (Doc. 2051283); the Alliance for Automotive Innovation (Doc. 2055357); and Ford Motor Company (Doc. 2055386). They also include the Zero Emissions Transportation Association (“ZETA”), whose motion to intervene was filed on June 20, 2024 (Doc. 2060853). ZETA’s motion to intervene has not been opposed, and the time for registering opposing has expired. Respondent-Intervenors will avoid duplication of briefing, but have distinct perspectives and are not able at this time to commit to joint briefing. Respondent-Intervenors respectfully request leave to file up to five briefs, even as they will undertake to combine where possible.<sup>1</sup>

State and Local Government Respondent-Intervenors are 22 States, the District of Columbia, and four local governments (cities and counties). This Court ordinarily does not compel governmental intervenors to file joint briefs with other intervenors, D.C. Cir. R. 28(d)(4), and there is no reason to depart from that sound practice here. States have a well-established and particular “stake in protecting

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<sup>1</sup> In *Texas v. EPA*, No. 22-1031, this Court authorized respondent-intervenors to file up to four briefs, Order (Sept. 22, 2022) (Doc. 1965622), but respondent-intervenors there filed only three briefs.

[their] quasi-sovereign interests” from the harms that vehicular greenhouse gas emissions cause. *Massachusetts v. EPA*, 549 U.S. 497, 520 (2007). They should not be required to advocate for their quasi-sovereign and sovereign interests in a joint brief with other parties.

The Public Interest Organization Respondent-Intervenors are 12 national and regional nonprofit environmental and public health organizations committed to protecting their members from the effects of harmful air pollution, including effects traceable to climate change, and to advancing their members’ interest in wider availability of cleaner vehicles. They have a different perspective from the other Respondent-Intervenors, who include state and municipal governments, vehicle manufacturers, and other industry parties. The Public Interest Organization Respondent-Intervenors will coordinate with other parties to avoid duplication, but should be allowed to file their own brief.

Respondent-intervenor Alliance for Automotive Innovation (“Auto Innovators”) is the trade association that represents all full-line, global vehicle manufacturers who produce and sell internal-combustion-powered as well as electric vehicles in the United States. The members of Auto Innovators are the primary regulated parties for EPA’s multi-pollutant emissions regulations, and collectively they manufacture approximately 95 percent of new cars and light trucks sold in this country. Auto Innovators is the only industry respondent-

intervenor able to defend, on behalf of all its members, several provisions of EPA's regulations that are critical to all its members' compliance with EPA's regulations, notwithstanding differences in its members' specific technologies and market strategies. Auto Innovators will coordinate with other parties to avoid duplication, and should be permitted to file a separate brief, as the Court allowed in *Texas v. EPA* (No. 22-1031), the proceedings for review of EPA's greenhouse-gas regulations for model years 2023-2026.

Respondent-Intervenor Ford Motor Company ("Ford") manufactures and sells vehicles in the United States and around the world. Ford employs more than 57,000 hourly manufacturing workers in the U.S., more than any other automaker. In 2023, Ford sold nearly 2 million vehicles in the U.S., including America's best-selling gasoline pickup truck, best-selling electric pickup truck, and best-selling full-size hybrid pickup truck. Although Ford is a member of Auto Innovators, it should be allowed to file a separate brief. Auto Innovators have intervened with regard to two discrete provisions of the challenged Rule: the provision allowing inclusion of electric vehicles in fleetwide compliance demonstrations, and the provision excluding "upstream emissions" from compliance determinations. Ford intends to more broadly defend the EPA's ability to establish the Rule's emissions standards, and its brief will discuss issues the Auto Innovators will not take a position on. Ford will coordinate with Auto Innovators and other parties to avoid

duplication, but should be permitted to file its own brief to provide its perspective as a manufacturer in areas that will not be addressed by other Respondent-Intervenors.

ZETA represents the interests of electric vehicle manufacturers, which are regulated entities, and other businesses that have made significant investments in the development and adoption of zero emission vehicles. ZETA supports the challenged action and its members have financial and reliance interests at stake. Unlike the State and Local Government Respondent-Intervenors and the Public Interest Organization Respondent-Intervenors, ZETA represents private industry, including regulated parties. And ZETA's interests are distinct from the other Respondent-Intervenors representing private companies for two key reasons. First, ZETA's members are solely within the electric vehicle supply chain—they do not manufacture any vehicles with internal combustion engines. Second, ZETA's membership extends beyond electric vehicle manufacturers to include companies from the utility, mining, and charging sectors. Accordingly, ZETA may take different positions on the challenged action than the other Respondent-Intervenors. ZETA will coordinate with other parties to avoid duplication, but should be allowed to file its own brief.

As for word count, Respondent-Intervenors concur with the proposal that affords them 70% of the words allotted to the Petitioners and Respondents,



consistent with the ratio set forth in this Court's rules. *Compare* Fed. R. App. P. 32(a)(7)(B)(i) with D.C. Cir. R. 32(e)(2)(b) (70% ratio). In addition, 18,200 words for Respondent-Intervenors is justified in this case because, as explained, there are five different groups of Respondent-Intervenors, a number of which have distinct interests. These include a trade association that represents virtually all regulated vehicle manufacturers, a major auto-manufacturing firm, a large group of States with recognized quasi-sovereign and sovereign interests in robust federal standards that reduce vehicular greenhouse gas emissions, a substantial number of environmental organizations, and a trade association representing electric zero-emitting vehicle manufacturers and other business interests invested in the development and adoption of advanced transportation technologies. The Respondent-Intervenors require 18,200 words, collectively, in order to address the issues from their unique positions.

\* \* \*

For these reasons, the parties ask the Court to enter their proposed briefing format and schedule as set forth above.

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Todd Kim  
Assistant Attorney General  
  
/s/ Jin Hyung Lee  
Sue Chen  
Alex J. Hardee

Jin Hyung Lee  
U.S. Department of Justice  
Environment & Natural Resources Div.  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044  
(202) 514-2640  
[jin.hyung.lee@usdoj.gov](mailto:jin.hyung.lee@usdoj.gov)

*Counsel for Respondents*

**RUSSELL COLEMAN**  
**Attorney General of Kentucky**

/s/ Matthew F. Kuhn  
Matthew F. Kuhn  
*Solicitor General*  
Victor B. Maddox  
*Counsel for Special Litigation*  
Jacob M. Abrahamson  
*Assistant Solicitor General*  
Office of the Kentucky  
Attorney General  
700 Capital Avenue, Suite 118  
Frankfort, Kentucky 40601  
(502) 696-5300  
Matt.Kuhn@ky.gov  
Victor.Maddox@ky.gov  
Jacob.Abrahamson@ky.gov

*Counsel for Petitioner*  
*Commonwealth of Kentucky*

**Patrick Morrisey**  
**Attorney General of**  
**West Virginia**

/s/ Michael R. Williams  
Michael R. Williams

*Solicitor General*  
Office of the West Virginia  
Attorney General  
State Capitol, Bldg 1, Room E-26  
Charleston, West Virginia 25305  
(681) 313-4550  
Michael.R.Williams@wvago.gov

*Counsel for Petitioner*  
*State of West Virginia*

**STEVE MARSHALL**  
**Attorney General of Alabama**

/s/ Edmund G. LaCour Jr.  
Edmund G. LaCour Jr.  
*Solicitor General*  
Office of the Attorney General  
State of Alabama  
501 Washington Avenue  
P.O. Box 300152  
Montgomery, Alabama 36130-0152  
Telephone: (334) 242-7300  
Fax: (334) 353-8400  
Edmund.LaCour@AlabamaAG.gov

*Counsel for Petitioner*  
*State of Alabama*

**TIM GRIFFIN**  
**Attorney General of Arkansas**

/s/ Nicholas J. Bronni  
Nicholas J. Bronni  
*Solicitor General*  
Dylan L. Jacobs  
*Deputy Solicitor General*  
Office of the Arkansas  
Attorney General  
323 Center Street, Suite 200

Little Rock, Arkansas 72201  
(501) 682-6302  
Nicholas.Bronni@ArkansasAG.gov  
Dylan.Jacobs@ArkansasAG.gov

*Counsel for Petitioner  
State of Arkansas*

**TREG R. TAYLOR**  
**Attorney General of Alaska**

/s/ Masha Kazakova  
Masha Kazakova  
*Assistant Attorney General*  
Environmental Section  
Alaska Department of Law  
1031 West 4th Avenue, Suite 200  
Anchorage, Alaska 99501-1994  
(907) 269-5211  
masha.kazakova@alaska.gov

*Counsel for Petitioner  
State of Alaska*

**ASHLEY MOODY**  
**Attorney General of Florida**

/s/ Henry C. Whitaker  
Henry C. Whitaker  
*Solicitor General*  
James H. Percival  
*Chief of Staff*  
Office of the Attorney General  
The Capitol, Pl-01  
Tallahassee, Florida 32399-1050  
(850) 414-3300  
(850) 410-2672 (fax)  
henry.whitaker@myfloridalegal.com  
james.percival@myfloridalegal.com

*Counsel for Petitioner  
State of Florida*

**CHRISTOPHER M. CARR**  
**Attorney General of Georgia**

/s/ Stephen J. Petrany  
Stephen J. Petrany  
*Solicitor General*  
Office of the Georgia  
Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
(404) 458-3408  
spetrany@law.ga.gov

*Counsel for Petitioner  
State of Georgia*

**THEODORE E. ROKITA**  
**Attorney General of Indiana**

/s/ James A. Barta  
James A. Barta  
*Solicitor General*  
Office of the Attorney General  
IGC South, Fifth Floor  
302 West Washington Street  
Indianapolis, Indiana 46204  
(317) 232-0709  
James.Barta@atg.in.gov

*Counsel for Petitioner  
State of Indiana*

**RAÚL R. LABRADOR**  
**Attorney General of Idaho**

/s/ Joshua N. Turner  
Joshua N. Turner

*Chief of Constitutional Litigation  
and Policy*

Alan M. Hurst

*Solicitor General*

Office of the Idaho

Attorney General

P.O. Box 83720

Boise, Idaho 83720-0010

Tel: (208) 334-2400

Fax: (208) 854-8071

Josh.Turner@ag.idaho.gov

Alan.Hurst@ag.idaho.gov

*Counsel for Petitioner  
State of Idaho*

**BRENNA BIRD**

**Attorney General of Iowa**

/s/ Eric H. Wessan

Eric H. Wessan

*Solicitor General*

1305 E. Walnut Street

Des Moines, Iowa 50319

(515) 823-9117

(515) 281-4209 (fax)

eric.wessan@ag.iowa.gov

*Counsel for Petitioner  
State of Iowa*

**KRIS KOBACH**

**Attorney General of Kansas**

/s/ Anthony J. Powell

Anthony J. Powell

*Solicitor General*

Office of Kansas Attorney General Kris W. Kobach

120 SW 10th Avenue, 2nd Floor

Topeka, Kansas 66612

Office: (785) 368-8539  
Fax: (785) 296-3131  
Anthony.Powell@ag.ks.gov

*Counsel for Petitioner  
State of Kansas*

**LYNN FITCH**  
**Attorney General of Mississippi**

/s/ Justin L. Matheny  
Justin L. Matheny  
*Deputy Solicitor General*  
Office of the Mississippi  
Attorney General  
P.O. Box 220  
Jackson, Mississippi 39205-0220  
(601) 359-3825  
justin.matheny@ago.ms.gov

*Counsel for Petitioner  
State of Mississippi*

**LIZ MURRILL**  
**Attorney General of Louisiana**

/s/ J. Benjamin Aguiñaga  
J. Benjamin Aguiñaga  
*Solicitor General*  
Office of the Louisiana  
Attorney General  
1885 North Third Street  
Baton Rouge, Louisiana 70802  
(225) 485-2458  
aguinagab@ag.louisiana.gov

*Counsel for Petitioner  
State of Louisiana*

**ANDREW BAILEY**

**Attorney General of Missouri**

/s/ Joshua M. Divine

Joshua M. Divine

*Solicitor General*

Office of the Attorney General

207 West High St.

Jefferson City, Missouri 65101

Phone: (573) 751-8870

Fax: (573) 751-1774

Josh.Divine@ago.mo.gov

*Counsel for Petitioner*

*State of Missouri*

**AUSTIN KNUDSEN**

**Attorney General of Montana**

/s/ Christian B. Corrigan

Christian B. Corrigan

*Solicitor General*

Montana Department of Justice

215 North Sanders

P.O. Box 201401

Helena, Montana 59620-1401

(406) 444-2026

christian.corrigan@mt.gov

*Counsel for Petitioner*

*State of Montana*

**JOHN FORMELLA**

**Attorney General of**

**New Hampshire**

/s/ Christopher G. Bond

Christopher G. Bond

*Associate Attorney General*

New Hampshire

Department of Justice



33 Capitol Street  
Concord, New Hampshire 03301  
(603) 271-3643  
Christopher.G.Bond@doj.nh.gov

*Counsel for Petitioner  
State of New Hampshire*

**MICHAEL T. HILGERS**  
**Attorney General of Nebraska**

/s/ Grant D. Strobl  
Grant D. Strobl  
*Assistant Solicitor General*  
Office of the Attorney General  
of Nebraska  
2115 State Capitol  
Lincoln, NE 68509  
(402) 471-2682  
Grant.Strobl@nebraska.gov

*Counsel for Petitioner  
State of Nebraska*

**DREW WRIGLEY**  
**Attorney General of  
North Dakota**

/s/ Philip Axt  
Philip Axt  
*Solicitor General*  
Office of Attorney General  
600 East Boulevard Avenue,  
Dept. 125  
Bismarck, North Dakota 58505  
(701) 328-2210  
pjaxt@nd.gov

*Counsel for Petitioner  
State of North Dakota*

**DAVE YOST**  
**Attorney General of Ohio**

/s/ T. Elliot Gaiser

T. Elliot Gaiser

*Solicitor General*

Mathura Sridharan

*Deputy Solicitor General*

Ohio Attorney General's Office

30 E. Broad Street, Floor 17

Columbus, Ohio 43215

(614) 466-8980

elliott.gaiser@ohioago.gov

mathura.sridharan@ohioago.gov

*Counsel for Petitioner*

*State of Ohio*

**ALAN WILSON**  
**Attorney General of**  
**South Carolina**

/s/ James Emory Smith, Jr.

James Emory Smith, Jr.

*South Carolina*

*Deputy Solicitor General*

P.O. Box 11549

Columbia, South Carolina 29211

(803) 734-3642

esmith@scag.gov

*Counsel for Petitioner*

*State of South Carolina*

**GENTNER F. DRUMMOND**  
**Attorney General of Oklahoma**

/s/ Garry M. Gaskins, II

Garry M. Gaskins, II

*Solicitor General*  
Oklahoma Office of the  
Attorney General  
313 Northeast 21st Street  
Oklahoma City, Oklahoma 73105  
(405) 312-2451  
Garry.Gaskins@oag.ok.gov

*Counsel for Petitioner*  
*State of Oklahoma*

**MARTY J. JACKLEY**  
**Attorney General of**  
**South Dakota**

/s/ Steven Blair  
Steven Blair  
*Deputy Attorney General*  
South Dakota Attorney  
General's Office  
1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501  
(605) 773-3215  
atgservice@state.sd.us

*Counsel for Petitioner*  
*State of South Dakota*

**KEN PAXTON**  
**Attorney General of Texas**

Brent Webster  
*First Assistant Attorney General*

Aaron L. Nielson  
*Solicitor General*

/s/ Lanora C. Pettit  
Lanora C. Pettit  
*Principal Deputy Solicitor General*

J. Andrew Mackenzie  
Wesley S. Williams  
*Assistant Attorneys General*  
Office of Texas Attorney General  
P.O. Box 12548  
Austin, Texas 78711  
(512) 936-1700  
Lanora.Petitt@oag.texas.gov

**SEAN D. REYES**  
**Attorney General of Utah**

/s/ Stanford E. Purser  
Stanford E. Purser  
*Solicitor General*  
Office of the Utah Attorney General  
160 East 300 Street, 5th Floor  
Salt Lake City, Utah 84111  
(385) 382-4334  
spurser@agutah.gov

*Counsel for Petitioner*  
*State of Utah*

**BRIDGET HILL**  
**Attorney General of Wyoming**

/s/ Ryan Schelhaas  
Ryan Schelhaas  
*Chief Deputy Attorney General*  
Wyoming Attorney General's Office  
109 State Capitol  
Cheyenne, Wyoming 82002  
(307) 777-5786 phone  
(307) 777-6869 fax  
ryan.schelhaas@wyo.gov

*Counsel for Petitioner*  
*State of Wyoming*

**JASON S. MIYARES**  
**Attorney General of Virginia**

/s/ Kevin M. Gallagher  
Kevin M. Gallagher  
*Principal Deputy Solicitor General*  
Brendan T. Chestnut  
*Deputy Solicitor General*  
Virginia Attorney General's Office  
202 North 9th Street  
Richmond, Virginia 23219  
(804) 786-2071  
kgallagher@oag.state.va.us  
bchestnut@oag.state.va.us

*Counsel for Petitioner*  
*Commonwealth of Virginia*

/s/ Jeffrey B. Wall  
Jeffrey B. Wall  
Morgan L. Ratner  
SULLIVAN & CROMWELL LLP  
1700 New York Avenue NW, Suite 700  
Washington, DC 20006  
(202) 956-7500  
wallj@sullcrom.com

*Counsel for Diamond Alternative Energy, LLC and Valero Renewable Fuels Company, LLC*

/s/ Paul D. Clement  
Paul D. Clement  
C. Harker Rhodes IV  
Nicholas A. Aquart\*  
CLEMENT & MURPHY, PLLC  
706 Duke Street  
Alexandria, VA 22314  
(202) 742-8900  
paul.clement@clementmurphy.com

\*Supervised by principals of the firm who  
are members of the Virginia bar

*Counsel for Petitioners American Petroleum Institute, American Farm Bureau Federation, National Corn Growers Association, Baxter Ford, Inc., Celebrity Motor Cars, LLC, Celebrity Motors of Toms River, LLC, Celebrity of Springfield, LLC, Celebrity of Westchester, LLC, Gates Nissan LLC, AML Automotive Peoria, LLC, Loquercio Automotive, Inc., Loquercio Automotive GOE, LLC, Loquercio Automotive Goshen, LLC, Loquercio Automotive MCH, LLC, Loquercio Automotive MCK, LLC, Loquercio Automotive South, Inc., Loquercio Automotive West, LLC, Raecom Holdings, LLC, and Tarver Motor Company, Inc.*

/s/ Eric D. McArthur  
Eric D. McArthur  
SIDLEY AUSTIN LLP  
1501 K Street, NW  
Washington, DC 20005  
(202) 736-8000  
emcarthur@sidley.com

*Counsel for Trade Association  
Petitioners in No. 24-1195*

/s/ Brittany M. Pemberton  
Brittany M. Pemberton  
BRACEWELL LLP  
2001 M Street NW, Suite 900  
Washington, DC 20036  
(202) 828-5800  
brittany.pemberton@bracewell.com

*Counsel for International  
Association of Machinists and  
Aerospace Workers Lodge No.  
823, Diamond Alternative Energy, LLC, and Valero Renewable Fuels Company,  
LLC*

/s/ Michael Buschbacher  
Michael Buschbacher  
Laura B. Ruppalt

Boyden Gray PLLC  
801 17th St. NW, #350  
Washington, DC 20006  
(202) 955-0620  
mbuschbacher@boydengray.com

*Counsel for American Free Enterprise Chamber of Commerce; Clean Fuels Development Coalition; ICM, Inc.; Illinois Corn Growers Association; Indiana Corn Growers Association; Iowa Corn Growers Association; Kansas Corn Growers Association; Kentucky Corn Growers Association; Michigan Corn Growers Association; Minnesota Corn Growers Association; Missouri Corn Growers Association; Nebraska Corn Growers Association; Ohio Corn and Wheat Growers Association; South Dakota Corn Growers Association; Tennessee Corn Growers Association; Wisconsin Corn Growers Association; Diamond Alternative Energy, LLC; and Valero Renewable Fuels Company, LLC*

/s/ Matthew W. Morrison  
Matthew W. Morrison  
Shelby L. Dyl  
PILLSBURY WINTHROP SHAW PITTMAN LLP  
1200 Seventeenth Street NW  
Washington, DC 20036  
(202) 663-8036  
matthew.morrison@pillsburylaw.com  
shelby.dyl@pillsburylaw.com

*Counsel for Renewable Fuels Association and National Farmers Union*

/s/ Justin D. Smith  
D. John Sauer  
Justin D. Smith  
JAMES OTIS LAW GROUP, LLC  
13321 North Outer Forty Road, Suite 300  
St. Louis, Missouri 63017  
(816) 678-2103  
Justin.Smith@james-otis.com

*Attorneys for Petitioners President of the Arizona State Senate Warren Petersen, Speaker of the Arizona House of Representatives Ben Toma, and the Arizona Trucking Association*

/s/ Theodore Hadzi-Antich

Theodore Hadzi-Antich

Robert Henneke

Connor Mighell

TEXAS PUBLIC POLICY FOUNDATION

901 Congress Avenue

Austin, Texas 78701

(512) 472-2700

rhenneke@texaspolicy.com

tha@texaspolicy.com

cmighell@texaspolicy.com

*Counsel for Petitioners Western States Trucking Association, Inc., and  
Construction Industry Air Quality Coalition, Inc.*

FOR THE STATE OF CALIFORNIA

ROB BONTA

ATTORNEY GENERAL

MYUNG J. PARK

DENNIS L. BECK, JR.

Supervising Deputy Attorneys General

/s/ Micaela M. Harms

MICAELA M. HARMS

THEODORE A. MCCOMBS

M. ELAINE MECKENSTOCK

Deputy Attorneys General

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102

(415) 510-3743

*Attorneys for the State of California by and through its Governor Gavin Newsom,  
its Attorney General Rob Bonta, and the California Air Resources Board, and on  
behalf of State and Local Government Respondent-Intervenors*

/s/ Alice Henderson

Alice Henderson



Andrew P. Su  
Vickie L. Patton  
Peter Zalzal  
Environmental Defense Fund  
2060 Broadway, Ste. 300  
Boulder, CO 80302  
(303) 447-7205  
ahenderson@edf.org

Sean H. Donahue  
Megan M. Herzog  
Donahue, Goldberg & Herzog  
1008 Pennsylvania Avenue, SE  
Washington, DC 20003  
(202) 683-6895  
sean@donahuegoldberg.com

*Counsel for Environmental Defense Fund*

Shaun Goho  
Veronica Saltzman  
Clean Air Task Force  
114 State St. 6th Floor  
Boston, MA 02109  
(617) 624-0234  
sgoho@catf.us

*Counsel for Alliance of Nurses for Healthy Environments, American Lung Association, American Public Health Association, Appalachian Mountain Club, Clean Air Council, and National Parks Conservation Association.*

Maya Golden-Krasner  
Center for Biological Diversity  
1212 Broadway, Suite 800  
Oakland, CA 94612  
(213) 215-3729  
mgoldenkrasner@biologicaldiversity.org

Margaret A. Coulter  
Center for Biological Diversity

1411 K Street NW, Suite 1300  
Washington, DC 20005  
(202) 961-4820  
mcoulter@biologicaldiversity.org

*Counsel for Center for Biological Diversity*

Emily K. Green  
Conservation Law Foundation  
53 Exchange Street, Suite 200  
Portland, ME 04101  
(207) 210-6439  
egreen@clf.org

*Counsel for Conservation Law Foundation*

Allison M. Zieve  
Public Citizen Litigation Group  
1600 20th Street NW  
Washington, DC 20009  
(202) 588-1000  
azieve@citizen.org

*Counsel for Public Citizen, Inc.*

Rebecca Lowy  
Environmental Law & Policy Center  
740 15th St NW STE 700  
Washington, D.C. 20005  
(312) 673-6500  
rlowy@elpc.org

*Counsel for Environmental Law & Policy Center*

Ian Fein  
Natural Resources Defense Council  
111 Sutter Street, 21st Floor  
San Francisco, CA 94104  
(415) 875-6100  
ifein@nrdc.org

Julia K. Forgie  
Natural Resources Defense Council  
1314 Second Street  
Santa Monica, CA 90401  
(310) 434-2300  
jforgie@nrdc.org

*Counsel for Natural Resources Defense Council, Inc.*

Joanne Spalding  
Andrea Issod  
Sierra Club  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
(415) 977-5725  
joanne.spalding@sierraclub.org

Joshua Berman  
Sierra Club  
50 F Street NW, 8th Floor  
Washington, DC 20001  
(202) 650-6062  
josh.berman@sierraclub.org

Vera Pardee  
726 Euclid Avenue  
Berkeley, CA 94708  
(858) 717-1448  
pardeelaw@gmail.com

*Counsel for Sierra Club*

Steven Croley  
Chief Policy Officer and General Counsel  
FORD MOTOR COMPANY  
One American Road  
Dearborn, MI 48126-2798  
(313) 480-8803  
scroley@ford.com

Evan Belser  
Policy Strategist and Managing Counsel  
Office of General Counsel  
FORD MOTOR COMPANY  
801 Pennsylvania Ave NW, Suite 400  
Washington, DC 20004  
(202) 997-0217  
ebelser1@ford.com

Charles H. Haake  
Catherine M. W. Palin  
ALLIANCE FOR AUTOMOTIVE  
INNOVATION  
1050 K Street, N.W. Suite 650  
Washington, D.C. 20001  
(202) 326-5500

/s/ Elisabeth S. Theodore

Jonathan S. Martel  
Elisabeth S. Theodore  
Samuel I. Ferenc  
ARNOLD & PORTER KAYE SCHOLER  
LLP  
601 Massachusetts Ave. NW  
Washington, DC 20001-3743  
(202) 942-5000  
jonathan.martel@arnoldporter.com  
elisabeth.theodore@arnoldporter.com  
sam.ferenc@arnoldporter.com

*Counsel for Ford Motor Company*

/s/John C. O'Quinn

John C. O'Quinn  
Counsel of Record  
Stuart Drake  
Annie Chiang  
Kirkland & Ellis LLP  
1301 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004  
(202) 389-5000  
[john.oquinn@kirkland.com](mailto:john.oquinn@kirkland.com)

*Counsel for Intervenor Alliance for  
Automotive Innovation*

/s/ Gary S. Guzy  
Gary S. Guzy  
Thomas Brugato  
Covington & Burling LLP  
850 Tenth Street, NW  
Washington, DC 20001-4956  
(202) 662-6000  
gguzy@cov.com  
tbrugato@cov.com

Thomas Callahan  
Covington & Burling LLP  
1999 Avenue of the Stars  
Los Angeles, CA 90067-4643  
(424) 332-4812  
tcallahan@cov.com

*Attorneys for Movant-Intervenor  
Zero Emission Transportation  
Association*

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I certify that this filing complies with Fed. R. App. P. 27(d)(1)(E) because it uses 14-point Times New Roman, a proportionally spaced font.

I also certify that this filing complies with Fed. R. App. P. 27(d)(2)(A), because by Microsoft Word's count, it has 1785 words, excluding the parts exempted under Fed. R. App. P. 32(f).

Finally, I certify that on July 3, 2024, I filed the foregoing with the Court's CMS/ECF system, which will notify each party.

/s/ Jin Hyung Lee  
Jin Hyung Lee